



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Southeast Regional Office  
263 13<sup>th</sup> Avenue South  
St. Petersburg, Florida 33701-5505  
<https://www.fisheries.noaa.gov/region/southeast>

F/SER31:JLL

Stephen R. Hernick  
Friends of Animals, Wildlife Law Program  
7500 E. Arapahoe Road, Suite 385  
Centennial, CO 80112  
720.949.7791  
[shernick@friendsofanimals.org](mailto:shernick@friendsofanimals.org)

Dear Mr. Stephen,

The National Marine Fisheries Service (NMFS) received your June 28, 2022, 60-day notice of intent (NOI) to sue alleging violations of the Endangered Species Act (ESA) (16 U.S.C. § 1531, et seq.). You state that NMFS violated the ESA by not relying on the best available science to determine the effects of the Velella Epsilon project on listed species. Among other things, you state that NMFS failed to consider that the VE Project would act as a fish aggregating device (FAD), would result in increased vessel traffic, and would increase the likelihood of harmful algal blooms.

On September 30, 2019, we concurred with the EPA and USACE determinations that the Velella Epsilon project is not likely to adversely affect any listed or proposed species or designated or proposed critical habitat in a letter of concurrence (LOC). On July 14, 2022, we determined that NOAA Sea Grant's proposed funding of Velella Epsilon was within the scope of the original action and therefore the findings of the informal consultation are applicable. But we also determined that we did not fully document all of potential effects of the project in our LOC. Therefore, on August 26, 2022, we issued an amended LOC for this project in which we considered the best available information and expanded the scope of our analysis to address the potential risk of vessel strikes by project and non-project vessels, the potential effects of the aquaculture facility acting as a FAD, and the potential effects of harmful algal blooms (see enclosed amended LOC for details).

As noted in the original LOC, the applicant, Ocean Era, Inc., has agreed to monitoring throughout the life of the project which will reduce the likelihood of any potential injury to all protected species including ESA-listed marine animals. Consultation must be reinitiated if a take occurs or new information reveals effects of the action not previously considered, or if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or critical habitat designated that may be affected by the identified action.

If you would like to discuss this project and its potential effects on ESA listed species further, please contact Jennifer Lee at [Jennifer.Lee@noaa.gov](mailto:Jennifer.Lee@noaa.gov).

Sincerely,

Kelly Shotts  
Acting Assistant Regional Administrator  
for Protected Resources



Files: 1514-22.k, 1514-22.e, 1514-22.f.4

Enclosure

cc: F/SER: Andy Strelcheck

F/SER31: Dennis Klemm, Jennifer Lee, Lindsey Feldman, Joseph Shields